

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2894 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

P G RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 28/08/98

ORAL JUDGEMENT

This petition came to be filed in year 1986 by the petitioner Shri. P.G. Rawal.

He was put in little bit awkward position and was compelled to file the petition. According to him, he being a Government servant or employee, was allotted Government accommodation, namely Quarter No. A-10

situated at New Mental Hospital Officers Colony, Ahmedabad. It was brought to the notice of his employers that, the petitioner had taken the House Building Advance from the Government, and had purchased the tenement near Sun Set, Drive-in-cinema at Ahmedabad. It was the view of the Government that, when he was owning a house at Ahmedabad which he had purchased after availing the facility of House Building Advance, his occupation qua Quarter No. A-10 at New Mental Hospital Officers Colony had become unauthorised. The Government therefore had proceed to fix the rent at the market rate, which, according to the Government, was required to be paid by the petitioner employee. When the dispute was pending, the petitioner had retired and the Government had preferred to deduct the amount amounting to Rs.98,833-00 from his retirement benefits. The petitioner is asking for the refund of the same.

Upon hearing Id. Sr. Counsel Mr. Tanna for the petitioner and Id. Govt. Counsel Ms. Harsha Devani, it appears that, later on in the Eviction Proceedings which came to be registered as Eviction Case No. 29 of 1985, the Dy. Collector & Competent Authority had come to the conclusion that, though the petitioner had purchased the accommodation situated near Sun Set, Drive-in-cinema, there was a basic infirmity in the transaction because the organizer who had constructed the premises had not obtained No Objection Certificate. Not only this but he had no clear title over the property. Because of this the petitioner was compelled to dispose of this accommodation at a later juncture, and the amount which he had realised had deposited against the dues which the Government was claiming against him, as per the House Building Advance account. The Competent authority has taken the view that, when the petitioner was required to dispose of the above said accommodation purchased by him because of the basic difficulty of the title, it cannot be said that he had remained in unauthorised occupation qua the Government quarter namely Quarter No. A/10 situated at New Mental Hospital Officers Colony. The Competent Authority therefore had come to the conclusion that, the eviction proceedings instituted by Dy. Director, Accommodation, R & B, were required to be disposed of and filed. It is also been said in these orders that, if there was any other ground on which the eviction proceedings could have been initiated comes to the notice of the authority concerned, fresh proceedings could be initiated against the petitioner. Thus a view has been taken that the petitioner was not in the unauthorised occupation of the premises allotted to him as the Government servant.

Ld. Govt. counsel Ms. Devani urges that, there is a mention in the above said orders pronounced by the Competent Authority that the petitioner could be said to be in unauthorised occupation for the interregnum, that is from the date of purchase of the accommodation near Sun Set, Drive--in-cinema till its disposal. Though this aspect has been referred in the orders pronounced by the Competent Authority, ultimately a view has been taken that, looking to the fact situation the petitioner cannot be said to be in the unauthorised occupation of the Government accommodation allotted to him. The proceedings against him came to be terminated and though the liberty was reserved for the Government to initiate other or further actions against the petitioner, the same has not been done. In view of this, it appears that the contention being raised by Ld. Government counsel Ms. Devani cannot be accepted.

It is not in dispute that, till his retirement the total amount of Rs.98,833-00 has been deducted from the pay and later on from the pensionary benefits. This amount must be returned to the petitioner. It would be appropriate if the above said amount is ordered to be refunded, together with the interest at the rate of six percentum per annum from the date of the gradual recovery till the date of payment. This amount should be refunded within a period of two months from the date of receipt of the writ of the present orders. Rule is made absolute. No cost. The copy of the orders in Eviction Case No. 29 of 1985 be retained on record. Direct service permitted.

/vgn.